

LEGISLATIVE BILL 343

Approved by the Governor June 2, 2005

Introduced by Baker, 44

AN ACT relating to the Nebraska Public Safety Wireless Communication System Act; to amend section 58-202, Reissue Revised Statutes of Nebraska, and sections 86-401 to 86-403, 86-416 to 86-418, 86-516, 86-543, and 86-572, Revised Statutes Supplement, 2004; to rename and change and eliminate provisions of the act; to create and eliminate advisory boards; to harmonize provisions; to repeal the original sections; to outright repeal sections 86-404 to 86-406, 86-409 to 86-415, and 86-419, Revised Statutes Supplement, 2004; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 58-202, Reissue Revised Statutes of Nebraska, is amended to read:

58-202. (1) The Legislature hereby finds and declares that:

(a) The high cost of agricultural loans and the general unavailability of such loans at favorable rates and terms for farmers, particularly beginning farmers, and other agricultural enterprises have resulted in decreased crop, livestock, and business productivity and prevented farmers and other agricultural enterprises from acquiring modern agricultural equipment and processes. These problems have made it difficult for farmers and other agricultural enterprises to maintain or increase their present number of employees and have decreased the supply of agricultural commodities available to fulfill the needs of the citizens of this state; and

(b) There exists in this state an inadequate supply of and a pressing need for farm credit and agricultural loan financing at interest rates and terms which are consistent with the needs of farmers, particularly beginning farmers, and other agricultural enterprises.

(2) The Legislature hereby finds and declares that:

(a) From time to time the high rates of interest charged by mortgage lenders seriously restrict existing housing transfers and new housing starts and the resultant reduction in residential construction starts causes a condition of substantial unemployment and underemployment in the construction industry;

(b) Such conditions generally result in and contribute to the creation of slums and blighted areas in the urban and rural areas of this state and a deterioration of the quality of living conditions within this state and necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident prevention, and other public services and facilities; and

(c) There exists in the urban and rural areas of this state an inadequate supply of and a pressing need for sanitary, safe, and uncrowded housing at prices at which low-income and moderate-income persons, particularly first-time homebuyers, can afford to purchase, construct, or rent and as a result such persons are forced to occupy unsanitary, unsafe, and overcrowded housing.

(3) The Legislature hereby finds and declares that:

(a) Adequate and reliable energy supplies are a basic necessity of life and sufficient energy supplies are essential to supplying adequate food and shelter;

(b) The cost and availability of energy supplies has been and will continue to be a matter of state and national concern;

(c) The increasing cost and decreasing availability of energy supplies for purposes of residential heating will limit the ability of many of Nebraska's citizens to provide the basic necessities of life and will result in a deterioration in living conditions and a threat to the health and welfare of the citizens of this state;

(d) Energy conservation through building modifications including, but not limited to, insulation, weatherization, and the installation of alternative energy devices has been shown to be a prudent means of reducing energy consumption costs and the need for additional costly facilities to produce and supply energy;

(e) Because of the high cost of available capital, the purchase of energy conservation devices is not possible for many Nebraskans. The prohibitively high interest rates for private capital create a situation in which the necessary capital cannot be obtained solely from private enterprise

sources and there is a need for the stimulation of investment of private capital, thereby encouraging the purchase of energy conservation devices and energy conserving building modifications;

(f) The increased cost per capita of supplying adequate life-sustaining energy needs has reduced the amount of funds, both public and private, available for providing other necessities of life, including food, health care, and safe, sanitary housing; and

(g) The continuing purchase of energy supplies results in the transfer of ever-increasing amounts of capital to out-of-state energy suppliers.

(4) The Legislature hereby finds and declares that:

(a) There exist within this state unemployment and underemployment especially in areas of basic economic activity, caused by economic decline and need for diversification of the economic base, needlessly increasing public expenditures for unemployment compensation and welfare, decreasing the tax base, reducing tax revenue, and resulting in economic and social liabilities to the entire state;

(b) Such unemployment and underemployment cause areas of the state to deteriorate and become substandard and blighted and such conditions result in making such areas economic or social liabilities harmful to the economic and social well-being of the entire state and the communities in which they exist, needlessly increasing public expenditures, imposing onerous state and municipal burdens, decreasing the tax base, reducing tax revenue, substantially impairing or arresting the sound growth of the state and the municipalities, depreciating general state and community-wide values, and contributing to the spread of disease and crime which necessitate excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, and punishment, for the treatment of juvenile delinquency, for the maintenance of adequate police, fire, and accident protection, and for other public services and facilities;

(c) There exist within this state conditions resulting from the concentration of population of various counties, cities, and villages which require the construction, maintenance, and operation of adequate hospital and nursing facilities for the care of the public health. Since these conditions cannot be remedied by the ordinary operations of private enterprises and since provision of adequate hospital, nursing, and medical care is a public use, it is in the public interest that adequate hospital and medical facilities and care be provided in order to care for and protect the public health and welfare;

(d) Creation of basic economic jobs in the private sector and the promotion of health and welfare by the means provided under the Nebraska Investment Finance Authority Act and the resulting reduction of needless public expenditures, expansion of the tax base, provision of hospitals and health care and related facilities, and increase of tax revenue are needed within this state; and

(e) Stimulation of economic development throughout the state and the provision of health care at affordable prices are matters of state policy, public interest, and statewide concern and within the powers and authority inherent in and reserved to the state in order that the state and its municipalities shall not continue to be endangered by areas which consume an excessive proportion of their revenue, in order that the economic base of the state may be broadened and stabilized thereby providing jobs and necessary tax base, and in order that adequate health care services be provided to all residents of this state.

(5) The Legislature hereby finds and declares that:

(a) There is a need within this state for financing to assist municipalities, as defined in section 81-15,149, in providing wastewater treatment facilities and safe drinking water facilities. The federal funding provided for wastewater treatment facilities is extremely limited while the need to provide and improve wastewater treatment facilities and safe drinking water facilities is great;

(b) The construction, development, rehabilitation, and improvement of modern and efficient sewer systems and wastewater treatment facilities are essential to protecting and improving the state's water quality, the provision of adequate wastewater treatment facilities and safe drinking water facilities is essential to economic growth and development, and new sources of financing for such projects are needed;

(c) The federal government has acted to end the system of federal construction grants for clean water projects and has instead provided for capitalization grants to capitalize state revolving funds for wastewater treatment projects and will soon expand that to include safe drinking water

facilities, and the state has created or is expected to create appropriate funds or accounts for such purpose. The state is required or expected to be required to provide matching funds for deposit into such funds or accounts, and there is a need for financing in excess of the amount which can be provided by the federal money and the state match; and

(d) Additional assistance can be provided to municipalities as defined in section 81-15,149 to alleviate the problems of water pollution or the provision of safe drinking water by providing for the issuance of revenue bonds, the proceeds of which shall be deposited into the Wastewater Treatment Facilities Construction Loan Fund or the comparable state fund to finance safe drinking water facilities. Nothing in this section shall prohibit the provision of loans, including loans made pursuant to the Conservation Corporation Act, to a municipality as defined in section 81-15,149 for the construction, development, rehabilitation, operation, maintenance, and improvement of wastewater treatment facilities or safe drinking water facilities.

(6) The Legislature hereby finds and declares that:

(a) There is a need within this state for financing to assist public school boards and school districts and private for-profit or not-for-profit schools in connection with removal of materials determined to be hazardous to the health and well-being of the residents of the state and the reduction or elimination of accessibility barriers and that the federal funding provided for such projects is extremely limited and the need and requirement to remove such materials and to reduce or eliminate accessibility barriers from school buildings is great;

(b) The financing of the removal of such environmental hazards and the reduction or elimination of accessibility barriers is essential to protecting and improving the facilities in the state which provide educational benefits and services;

(c) The federal government has directed schools to remove such hazardous materials and to reduce or eliminate accessibility barriers; and

(d) The problems enumerated in this subsection cannot be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the assistance of the authority to encourage the investment of private capital and assist in the financing of the removal of environmental hazards and the reduction or elimination of accessibility barriers in educational facilities in this state in order to provide for a clean, safe, and accessible environment to protect the health and welfare of the citizens and residents of this state.

(7) The Legislature hereby finds and declares that:

(a) The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the ground water supply. In addition, the nature of the waste and the disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition;

(b) Wastes filling Nebraska's landfills may at best represent a potential resource, but without proper management wastes are hazards to the environment and to the public health and welfare;

(c) The growing concern with ground water protection and the desire to avoid financial risks inherent in ground water contamination have caused many smaller landfills to close in favor of using higher-volume facilities. Larger operations allow for better ground water protection at a relatively lower and more manageable cost;

(d) The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to landfills and increase the supply of reusable materials for the use of the public;

(e) There is a need within this state for financing to assist counties, cities, villages, entities created under the Interlocal Cooperation Act and the Joint Public Agency Act, and private persons with the construction and operation of new solid waste disposal areas or facilities and with the closure, monitoring, and remediation of existing solid waste disposal areas and facilities;

(f) Financing the construction and operation of new solid waste disposal areas and facilities and financing the closure, monitoring, and remediation of existing and former solid waste disposal areas and facilities in the state is essential to protect the environment and the public health and welfare;

(g) The federal government has directed that effective October 1, 1993, all solid waste disposal areas and facilities shall be upgraded to meet stringent siting, design, construction, operation, closure, monitoring, and

remediation requirements; and

(h) The problems enumerated in this subsection cannot be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the assistance of the authority to encourage the investment of private capital and to assist in the financing of solid waste disposal areas and facilities and in the removal of environmental hazards in solid waste disposal areas and facilities in this state in order to provide for a clean environment to protect the health and welfare of the citizens and residents of this state.

(8) The Legislature hereby finds and declares that:

(a) During emergencies the resources of political subdivisions must be effectively directed and coordinated to public safety agencies to save lives, to protect property, and to meet the needs of citizens;

(b) There exists a need for public safety communication systems for use by Nebraska's public safety agencies as defined in the Nebraska Public Safety ~~Wireless~~ Communication System Act;

(c) Investment in the public safety communication infrastructure is required to ensure the effectiveness of such public safety agencies. Since the maintenance of public safety is a paramount concern but the cost of purchasing and operating multiple communication infrastructures is prohibitive, it is imperative that political subdivisions cooperate in their efforts to obtain real and personal property to establish, operate, maintain, and manage public safety communication systems; and

(d) There is a need within this state for financing to assist political subdivisions and any entities created under the Interlocal Cooperation Act and the Joint Public Agency Act with the acquisition, construction, and operation of real and personal property of public safety communication systems.

Sec. 2. Section 86-401, Revised Statutes Supplement, 2004, is amended to read:

86-401. Sections 86-401 to ~~86-419~~ 86-418 and section 8 of this act shall be known and may be cited as the Nebraska Public Safety ~~Wireless~~ Communication System Act.

Sec. 3. Section 86-402, Revised Statutes Supplement, 2004, is amended to read:

86-402. The Legislature finds that:

(1) During emergencies the resources of the state and its political subdivisions must be effectively directed to save lives, to protect property, and to meet the needs of its citizens;

(2) Public safety agencies fulfill this unique and essential role;

(3) Public safety agencies are only as effective as their ability to communicate. To adequately ensure public safety, such agencies require ~~an~~ efficient, reliable communication ~~system~~ systems which ~~accounts~~ account for their unique role and the specialized needs that accompany such role;

(4) ~~Present~~ There are presently radio communication systems used by public safety agencies during daily operations and emergencies that are deficient. Many of Nebraska's systems are based on outdated technologies, rely on inadequate equipment, are susceptible to communication interference, have limited coverage areas, operate under the constraints of a limited number of radio frequency channels, and lack coordination and the ability to interoperate among city, county, and other local users, state users, and federal users. Additionally, such systems presently do not allow for secure transmissions which are necessary for the protection and integrity of public safety communications;

(5) Recent changes and advances in communication technology, ~~including wireless communication,~~ would increase the capability of public safety agencies to provide efficient and effective public safety services;

(6) Investment in the public safety communication infrastructure is required to ensure the effectiveness of Nebraska's public safety agencies; ~~Since the maintenance of public safety is a paramount concern but the cost of purchasing and operating multiple communication infrastructures is prohibitive, it is imperative that local and state public safety agencies cooperate in their efforts to obtain a single statewide seamless communication system,~~ and

(7) Regional approaches to communications planning and preparedness and the adoption of regional response structures should be used to develop and sustain interoperable communications. Local and state public safety agencies shall develop a comprehensive interoperable communications plan before receiving any state or federal funding to build, upgrade, enhance, or replace communication systems; and

(8) A statewide seamless communication system network of regional communication systems should balance the need for multiple simultaneous users

while maintaining autonomy for the internal use of individual agencies. The objectives of such a ~~system~~ network should include maximizing resources and reducing duplication among public safety agencies as well as encouraging cooperation, coordination, consolidation, sharing, and partnerships between public agencies and private entities.

Sec. 4. Section 86-403, Revised Statutes Supplement, 2004, is amended to read:

86-403. For purposes of the Nebraska Public Safety ~~Wireless~~ Communication System Act, the definitions found in sections ~~86-404 to 86-409~~ 86-407 and 86-408 apply.

Sec. 5. Section 86-416, Revised Statutes Supplement, 2004, is amended to read:

86-416. (1) Notwithstanding any other provision of Nebraska law, any city, county, village, public power district, or fire protection district may enter into a service agreement with any joint entity created pursuant to the Interlocal Cooperation Act or any joint public agency created pursuant to the Joint Public Agency Act which owns or operates or proposes to own or operate any public safety communication project for obtaining communication services, including the use or right to use real or personal property included in any such project. This subsection shall not be construed to authorize any service agreements that conflict with the provisions for the sale or lease of dark fiber pursuant to sections 86-574 to 86-578.

(2) Any such service agreement may provide for the following:

(a) The payment of fixed or variable periodic amounts for service or the right to obtain service, including the use or right to use real or personal property;

(b) That such service agreement may extend for a term of years as determined by the governing body of the city, county, village, public power district, or fire protection district and be binding upon such city, county, village, public power district, or fire protection district over such term of years;

(c) That fixed or variable periodic amounts payable may be determined based upon any of the following factors:

(i) Operating, maintenance, and management expenses, including renewals and replacements for facilities and equipment;

(ii) Amounts payable with respect to debt service on bonds or other obligations, including margins of coverage if deemed appropriate; and

(iii) Amounts necessary to build or maintain operating reserves, capital reserves, and debt service reserves;

(d) That any such service agreement may require payment to be made in the agreed fixed or variable periodic amounts irrespective of whether such public safety communication project or ~~statewide seamless wireless regional~~ communication system is completed or operational and notwithstanding any suspension, interruption, interference, reduction, or curtailment of the services of such project or system; and

(e) Such other provisions as the parties to the service agreement deem appropriate in connection with providing and obtaining public safety communication service, including the acquisition of real and personal property, the construction of facilities, and the operation, maintenance, and management of services, property, and facilities.

(3) In order to provide for the payments due under such service agreement:

(a) Any city, county, village, or fire protection district may provide that payments may be made from a special tax levied for such purpose upon all taxable property within such city, county, village, or fire protection district, if determined appropriate by the governing body by a vote of three-fourths of the members of the governing body, if there are four or more members of such body, or by a vote of two-thirds of the members of the governing body, if there are less than four members of such body. The special tax shall for all purposes of Nebraska law, including limitations upon tax levies, budgets, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such city, county, village, or fire protection district; and

(b) Any public power district may pledge the revenue of the district, subject to any existing pledges made for bonded indebtedness or borrowings from the United States or any other party and existing conditions relating to issuance of additional bonds or other indebtedness, and, if deemed appropriate by the governing body, the service agreement may have the status of revenue bond indebtedness issued pursuant to sections 70-631 to 70-635.

Sec. 6. Section 86-417, Revised Statutes Supplement, 2004, is amended to read:

86-417. The Public Safety Communications Fund is created. The fund

shall be administered by the division and shall consist of such money as appropriated by the Legislature. No General Funds shall be appropriated to the Public Safety Communications Fund until legislation has been passed identifying the share of the costs to be paid by the State of Nebraska and specifically authorizing the transfer of funds. The Public Safety Communications Fund shall be used for any costs and payments to be made by the State of Nebraska pursuant to the Nebraska Public Safety ~~Wireless~~ Communication System Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 7. Section 86-418, Revised Statutes Supplement, 2004, is amended to read:

86-418. The division shall develop and adopt technical and operational standards for any communication system acquired, developed, constructed, or replaced by any state agency or any city, county, village, public power district, fire protection district, or other political subdivision, including joint entities and joint public agencies created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. The ~~board~~ with the division shall develop incentives to encourage regional cooperation in public safety communication throughout the state. The ~~board~~ division shall assist local communities and public safety agencies which desire to connect with ~~the system~~ a network of regional communication systems. Incentive alternatives may include financial incentives to encourage migration by communities to the ~~system~~ network and to reward communities which coordinate efforts to form public safety communication centers. Such incentives shall not mandate migration by public safety agencies to the ~~system~~ network.

Sec. 8. (1) The Regional Interoperability Advisory Board is created. The board shall provide advice to the division regarding the formation, expansion, and enhancement of regional communication systems to achieve interoperability. For administrative and budgetary purposes, the board shall be within the division. The division shall provide office space, equipment, technical assistance, and staff support for the board.

(2) The advisory board shall consist of the following members, all of whom shall be individuals with knowledge of the communications needs of their represented constituency:

(a) A representative of the division;

(b) A representative of the Nebraska Emergency Management Agency;

and

(c) Four representatives of regional communication systems.

(3) The members of the advisory board shall be appointed by the Governor. Each member's term shall be for two years from the date of appointment. Members shall be reimbursed from the Public Safety Communications Fund for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

(4) The advisory board shall terminate on January 1, 2009.

Sec. 9. Section 86-516, Revised Statutes Supplement, 2004, is amended to read:

86-516. The commission shall:

(1) Annually by July 1, adopt policies and procedures used to develop, review, and annually update a statewide technology plan;

(2) Create an information technology clearinghouse to identify and share best practices and new developments, as well as identify existing problems and deficiencies;

(3) Review and adopt policies to provide incentives for investments in information technology infrastructure services;

(4) Determine a broad strategy and objectives for developing and sustaining information technology development in Nebraska, including long-range funding strategies, research and development investment, support and maintenance requirements, and system usage and assessment guidelines;

(5) Adopt guidelines regarding project planning and management, information sharing, and administrative and technical review procedures involving state-owned or state-supported technology and infrastructure. Governmental entities, state agencies, and political subdivisions shall submit projects which directly utilize state-appropriated funds for information technology purposes to the process established by sections 86-512 to 86-524. Governmental entities and political subdivisions may submit other projects involving information technology to the commission for comment, review, and recommendations;

(6) Adopt minimum technical standards, guidelines, and architectures upon recommendation by the technical panel;

(7) Establish ad hoc technical advisory groups to study and make

recommendations on specific topics, including work groups to establish, coordinate, and prioritize needs for education, local communities, and state agencies;

(8) By November 15 of each even-numbered year, make recommendations on technology investments to the Governor and the Legislature, including a prioritized list of projects, reviewed by the technical panel, for which new or additional funding is requested;

(9) Approve grants from the Community Technology Fund and Government Technology Collaboration Fund; and

(10) Adopt schedules and procedures for reporting needs, priorities, and recommended projects. + and

~~(11) Provide assistance upon request to the Public Safety Wireless Communication Advisory Board.~~

Sec. 10. Section 86-543, Revised Statutes Supplement, 2004, is amended to read:

86-543. (1) The council shall:

(a) Develop and publish one-year and five-year plans, specifications, and recommendations for the data processing needs of the state and for a network to provide for intergovernmental transfer of data;

(b) Seek to eliminate duplication of effort through coordination of related projects;

(c) Promote flexibility in the collection, use, and exchange of information in anticipation of future needs of the state and its political subdivisions;

(d) Identify and recommend data processing applications in anticipation of the future needs of state and local governments;

(e) Promote intergovernmental exchanges of data and technical expertise;

(f) Report to, assist, and advise the Chief Information Officer in setting information technology policy; and

(g) Provide assistance as requested by the Nebraska Information Technology Commission to support the technical panel created in section 86-521. + and

~~(h) Provide assistance upon request to the Public Safety Wireless Communication Advisory Board.~~

(2) The council may study and make recommendations, including a cost-benefit analysis, concerning:

(a) State projects which involve intergovernmental transfer of information in an electronic medium or multijurisdictional data processing projects; and

(b) A local project only if the request for assistance comes from the governmental subdivisions involved in the project.

Sec. 11. Section 86-572, Revised Statutes Supplement, 2004, is amended to read:

86-572. The Geographic Information System Steering Committee shall:

(1) Make recommendations to the Legislature for program initiatives and funding;

(2) Establish guidelines and policies for statewide Geographic Information System operations and management to include:

(a) The acquisition, development, maintenance, quality assurance such as quality control standards, access, ownership, cost recovery, and priorities of data bases;

(b) The compatibility, acquisition, and communications of hardware and software;

(c) The assessment of needs, identification of scope, setting of standards, and determination of an appropriate enforcement mechanism;

(d) The fostering of training programs and promoting education and information about the Geographic Information System; and

(e) The promoting of the Geographic Information System development in the State of Nebraska and providing or coordinating additional support to address Geographic Information System issues as such issues arise;

(3) Report to, assist, and advise the Chief Information Officer in setting information technology policy; and

(4) Provide assistance as requested by the Nebraska Information Technology Commission to support the technical panel created in section 86-521. + and

~~(5) Provide assistance upon request to the Public Safety Wireless Communication Advisory Board.~~

Sec. 12. Original section 58-202, Reissue Revised Statutes of Nebraska, and sections 86-401 to 86-403, 86-416 to 86-418, 86-516, 86-543, and 86-572, Revised Statutes Supplement, 2004, are repealed.

Sec. 13. The following sections are outright repealed: Sections

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86-404 to 86-406, 86-409 to 86-415, and 86-419, Revised Statutes Supplement, 2004.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.